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ENTRY INTO FORCE AND PROVISIONAL APPLICATION OF THE 1988 UNITED NATIONS CONVENTION AGAINST ILLICIT TRAFFIC IN NARCOTIC DRUGS AND PSYCHOTROPIC SUBSTANCES

Addendum

Report on the Meeting of the Expert Group on Pre-Trial Destruction of Seized Narcotic Drugs, Psychotropic Substances, Precursors and Essential Chemicals, held at Vienna from 13 to 17 November 1989

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INTRODUCTION

1. At the fourteenth Meeting of Heads of National Drug Law Enforcement Agencies (HONLEA), Asia and the Pacific, held at Bangkok from 3 to 7 October 1988, great concern was expressed about the disposal of seized narcotic drugs, psychotropic substances and substances used for their illicit manufacture, particularly when large amounts were involved. In view of the costs and risks incurred in keeping large consignments of seized drugs for evidentiary purposes, it was felt that their pre-trial destruction could be an appropriate solution, depending on the circumstances and on the domestic legal system. It was pointed out that existing techniques were time-consuming and some might not be desirable from an environmental or ecological standpoint. Accordingly, the Meeting decided to recommend that the Division of Narcotic Drugs of the United Nations Secretariat be requested to organize an expert group Meeting to consider:

> "1. Safe methods of destruction or other disposal of seized drugs and substances frequently used in the illicit processing or manufacture of narcotic drugs and psychotropic substances which are both effective and take into account the need to protect the ecology and environment;
>
> "2. The legal implications and problems relating to pre-trial destruction of seized drugs or other substances to be used for evidentiary purposes." (E/CN.7/1989/4, recommendation I.)

2. At its thirty-third session, the Commission on Narcotic Drugs considered the recommendation made by the fourteenth Meeting of HONLEA, Asia and the Pacific, and suggested that the Division of Narcotic Drugs should undertake preliminary work to determine the type of drugs that might require such destruction and the methodologies currently in use for such destruction; and to study any current laws devoted to the question. 1/

3. Pursuant to that request, the Meeting of the Expert Group on Pre-Trial Destruction of Seized Narcotic Drugs, Psychotropic Substances, Precursors and Essential Chemicals was held at Vienna from 13 to 17 November 1989 in order to consider the legal implications and problems relating to pre-trial destruction of seized drugs or other substances to be used for evidentiary purposes and to propose practical measures for such destruction or lawful disposal without hindrance to evidentiary requirements.

4. In opening the Meeting, the Director of the Division of Narcotic Drugs thanked the experts for accepting the invitation to participate in the first working group to address the issue of pre-trial destruction of seized narcotic drugs and psychotropic substances and substances used for their illicit manufacture. He noted the growing concern expressed in different forums with regard to the phenomenal increase of seizures, particularly at the fourteenth Meeting of Heads of National Drug Law Enforcement Agencies (HONLEA), Asia and the Pacific, held at Bangkok from 3 to 7 Ocotober 1988, and at the thirty-third session of the Commission on Narcotic Drugs in February 1989, which had led to the convening of the expert group Meeting. As a result of that concern, a paragraph had been included in article 14 in the United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances, in which it was stipulated that:

> "The Parties may also take necessary measures for early destruction or lawful disposal of the narcotic drugs, psychotropic substances and substances in Table I and Table II which have been seized

or confiscated and for the admissibility as evidence of duly certified necessary quantities of such substances." (E/CONF.82/15 and Corr.2, article 14, para. 5.)

He invited the Meeting in the course of its deliberations to examine legislative provisions that could be enacted or amended, as appropriate, to enable the early destruction or other lawful disposal of seized narcotic drugs and psychotropic substances or substances used for their illicit manufacture after the legally required sample or samples had been taken for analysis and evidentiary purposes.

5. The Meeting heard an audio-visual presentation by the Division of Narcotic Drugs regarding the escalating trends in the seizures of narcotic drugs based on data extracted from the Annual Reports Questionnaire on the implementation of the drug control treaties.

6. The Meeting was attended by nine experts listed in the annex. G. Serpa Guinazu (Argentina) was elected Chairman and R. K. Tewari (India) Vice-Chairman of the Meeting.

I. RECOMMENDATIONS

7. For the purpose of effectively implementing article 14, paragraph 5, of the Convention in relation to the pre-trial destruction or other lawful disposal of seized narcotic drugs, psychotropic substances and other substances referred to in that paragraph (hereafter collectively called "substances"), the Expert Group Meeting recommended that States consider adopting measures to give legal effect to the following:

(a) The seizing officer should prepare an inventory at the time of seizure. The inventory should contain particulars of:

(i) The substance seized, its gross weight and, where practicable, its net weight;

(ii) The quantity/volume of substance seized;

(iii) The date, time and place of seizure;

(iv) The name and title of the officer making the seizure and the name, address and identity of any suspect or witness;

(v) A description of packaging including seals, marks and any other identifying features;

(vi) Where appropriate, confirmation of inventory by a judicial officer, prosecutor or other independent authority;

(b) The seizing officer should also prepare a report of the seizure as soon as possible after seizure, which should include particulars of:

(i) The time, place and date of seizure;

(ii) The identity of the seizing officer and all persons present;

(iii) The circumstances in which seizure took place;

(iv) A description of the vehicle, vessel, place or person searched and the location where the substance was found;

(v) A description of the substance found;

(vi) A description of packaging, seals, and other identifying features;

(vii) A description of quantity, volume and units and the measurement method employed;

(viii) A description of any preliminary identification test used and results (test kit);

(ix) Statements of suspects and witnesses;

(x) All subsequent movements of the seized substance;

(xi) Any other matter;

(c) Visual records of the seizure could be made to record the time, site, subject matter and place where the substance was found, as well as the circumstances in which the seizure took place;

(d) Samples should be taken for evidentiary purposes before seized substances are destroyed or otherwise disposed of. They should be taken in sufficient quantities to ensure adequate identification of each substance. Sampling should follow internationally acceptable procedures such as those contained in the manuals for use by national narcotic laboratories prepared by the Division of Narcotics Drugs;

(e) Where necessary, a chemical analysis should be carried out on samples to determine the nature, quality and quantity of the substance contained therein. The analysis should be carried out and reported on as soon as possible after seizure to minimize the risk of physical or chemical change occurring;

(f) All movements of seized narcotic substances and samples thereof should be identified and recorded to ensure that there is sufficient proof that what was moved, sampled, stored, analysed or destroyed was what was seized;

(g) Appropriate security measures should be established and implemented to ensure that seized substances and samples thereof may not be unlawfully interfered with, used, taken or disposed of at any time following seizure until lawful disposal;

(h) Where appropriate and possible:

(i) The presence of alleged offenders or their representative should be secured at the time when samples are taken;

(ii) Additional samples should be taken to enable experts nominated by the alleged offenders to make an independent analysis;

(iii) Measures should be taken to ensure the security, objectivity and impartiality of those involved in carrying out such an analysis;

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(iv) Sanctions should be established for officials who unlawfully interfere with, use, take or dispose of seized substances or samples thereof. Such sanctions should also apply to experts and other persons who corruptly interfere with, or falsify the results of, analysis;

(i) In relation to the destruction or other disposal of seized substances:

(i) All seized substances should be destroyed or otherwise disposed of as soon as possible after seizure, except to the extent necessary to ensure successful prosecution and the due administration of justice;

(ii) Destruction or other disposal should be permitted immediately following the taking of samples where storage or security cannot be properly maintained or there is an imminent threat to life or property;

(iii) Decisions on method, procedure, timing and location of destruction or other disposal should be made by duly authorized persons. These decisions should be made on the basis of expert advice, with a view to preventing further illicit use while protecting human safety and the environment;

(iv) Adequate records (including visual records) should be made of destruction or other disposal to ensure successful prosecution and to maintain public confidence in the administration of justice;

(v) States adopting laws on pre-trial destruction of seized substances consistent with the provisions of article 14, paragraph 5, of the United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances (E/CONF.82/15 and Corr.2) should, as far as possible, apply them to any seizures made prior to their adoption.

8. For the purpose of implementing article 9, paragraph 1, of the Convention, particularly in order to enhance the effectiveness of co-operation between law enforcement agencies, the Meeting also recommended that States exchange intelligence on packaging, seals and other relevant seizure information to facilitate identification of the origin of seized substances.

II. DISCUSSION

9. The Meeting had before it a report prepared for the Meeting by the Division of Narcotic Drugs, in which laws and regulations dealing with the question of pre-trial destruction of seized narcotic drugs, psychotropic substances and substances used for their illicit manufacture were reviewed.

10. The Meeting was informed by several experts that their national legislation had been recently amended to include provisions enabling them to undertake, under certain conditions, the pre-trial destruction of seized narcotic drugs and psychotropic substances. It was observed that seizures had increased drastically following more vigorous action by law enforcement authorities. That trend was expected to continue when the Convention entered into force and States fully applied its provisions. Several experts stressed the importance of adopting provisions that were in line with national legislation in order to

prevent the warehousing of large quantities of seized narcotic drugs, psychotropic substances and substances used for their illicit manufacture. Their stockpiling made them vulnerable to theft, substitution, and diversion to the illicit traffic; their storage resulted in additional economic burdens on limited law enforcement resources.

11. At the invitation of the Chairman, experts outlined the legislative provisions and administrative measures, the procedures and some of the difficulties encountered with regard to the pre-trial destruction of seized substances within their respective countries. Participants also made available to the Meeting excerpts from the legislative provisions of their countries, as well as background documents regarding national practices.

12. The legislative provisions and detailed procedures and guidelines regarding the pre-trial and post-trial disposal of seized drugs in India were submitted to the Meeting. It was indicated that the Indian Criminal Procedure Code and the Customs Act, 1962, covered, inter alia, the pre-trial disposal of seized drugs after the retention of adequate samples for evidentiary purposes. In line with target 21 (Admissibility in evidence of samples of bulk seizure of drugs) of the Comprehensive Multidisciplinary Outline of Future Activities in Drug Abuse Control (CMO) and to give effect to article 14, paragraph 5, of the Convention, a new section covering the pre-trial disposal of seized narcotic drugs and psychotropic substances had been included in the Narcotic Drugs and Psychotropic Substances Act of 1985. Such disposal was undertaken after an inventory of the seized narcotic drugs and psychotropic substances in which the description, quality, quantity, mode of packing, marks, numbers, and other relevant identifying particulars of narcotic drugs and psychotropic substances had been recorded, and following the drawing and retention of representative samples. Most significantly, the amendment had made it possible for the inventory, photographs of seized narcotic drugs and psychotropic substances, and samples drawn and certified by the magistrate to be considered as primary evidence before the court, whereas they had previously been considered as secondary evidence.

13. The Meeting heard a presentation regarding the procedure for the pre-trial destruction of seized narcotic drugs and psychotropic substances in France. It was stated that, in general, particularly since most of the seizures were of small quantities, the seized drugs were sealed and addressed to the High Court (Tribunal de grande instance) and were kept in storage until the completion of the trial. An examining magistrate might, however, request the destruction of the seized drugs after conserving part of the seizure for evidentiary purposes. If granted, the seized drugs were destroyed by incineration in the presence of witnesses and a procès-verbal established. Samples of seized cocaine and heroin were sent to a central laboratory for analysis. Following their use for evidentiary purposes in court, the analysed samples were kept for three years after the trial before they were destroyed. At the end of that period, the Office of the Clerk of Courts would transmit to the Inspector of Pharmacies a report on the items to be destroyed. The samples would then be destroyed by the Chief Clerk of Courts, in the presence of the Inspector of Pharmacies. The destruction report signed by the Public Prosecutor of the Republic (Procureur de la République) had the force of official confirmation.

14. A presentation was made on the situation regarding the provisions for the pre-trial destruction of seized narcotic drugs and psychotropic substances in Egypt, in which it was noted that the deteriorating situation with regard to illicit traffic as reflected by the increased volume of seizures had led to the amendment, in 1989, of the legislation for the suppression of the illicit traffic and the control of narcotic drugs and psychotropic substances. Before

that amendment, all seized drugs had to be kept until the end of the judicial proceedings, which created practical and legal problems. The new law (No. 122 of 1989) provided, inter alia, for the possibility of the pre-trial destruction of narcotic drugs and psychotropic substances following the retention of the necessary samples for evidentiary purposes. The decision with regard to pre-trial destruction was to be taken by the competent court at the request of the Public Prosecutor if that was found necessary. Stringent security measures were taken for the destruction of the seized drugs in order to avoid their possible theft and diversion to the illicit traffic. Certain difficulties experienced in ensuring the integrity of personnel handling seized drugs were described.

15. The Meeting heard a description of the conditions and procedures concerning the pre-trial destruction of narcotic drugs, psychotropic substances and substances used for their illicit manufacture in Thailand. The Meeting was informed that cannabis, "kratom" plants, opium, psylocybine (magic mushroom), acetic anhydride, acetyl chloride and ethilidine diacetate might be destroyed before trial, after the necessary samples had been retained. Whenever possible the seized substances were reprocessed and used for legitimate purposes. The analysis of the samples of seized drugs, as well as samples of not less than 20 kilograms, was retained in each case. A report drawn up by the committee that authorized and supervised the destruction of the seized drug samples and the analysis thereof were to be kept as evidence.

16. The legal issues and practical problems raised by the pre-trial destruction of large seizures of narcotic drugs, psychotropic substances and substances used for their illicit manufacture in the custody of federal law enforcement authorities in the United States of America were pointed out to the Meeting. It was noted that there was no legislative measure regarding modalities for the disposal of seized drugs. A discretionary provision, however, provided for the prosecutor to be notified of the intention to carry out pre-trial destruction of seized drugs. The prosecutor might consent, with or without conditions, or refuse permission. If the drugs were destroyed, the law enforcement agency undertaking the destruction, with the consent of the prosecutor, had to retain a representative or threshold sample, take photographs or video-film, and record the weight, packaging and all other relevant factors that might be considered relevant for evidentiary purposes. The accused, however, had the right to insist on conducting his or her own independent test of the threshold sample and to request the court to retain the seized drugs until prosecution was concluded.

17. The Meeting was informed of a recent (October 1989) comprehensive drug control legislation adopted in Argentina, which, inter alia, covered the new forms of drug criminal activity specified in article 3, paragraph 1, of the Convention. The aggravating circumstances mentioned in paragraph 5 of that article were also included. The novel provisions adopted to harmonize the procedure for the pre-trial destruction of seized drugs were of particular importance. Following the retention of the necessary samples for evidentiary purposes, the seized drugs were destroyed by incineration, or, in the case of psychotropic substances or precursors and essential chemicals, by other safe methods, such as hydrolysis, which took into account the effect on the environment.

18. The recent (July 1988) legislative provisions covering pre-trial destruction in Bolivia were presented to the Meeting. Before 1988 all seized drugs had had to be presented to the court, with their resultant accumulation in the vaults of the Central Bank and the associated risk of theft and diversion to illicit traffic. The new provisions required that seized narcotic drugs,

psychotropic substances and substances used for their illicit manufacture be incinerated on the spot or in the same area of jurisdiction within 24 hours following their confiscation, in the presence of a representative of the Public Prosecutor and an approved notary public. A sample of not more than 10 grams was retained and deposited in the Central Bank of Bolivia for evidentiary purposes in conformity with the Code of Criminal Procedure. A detailed report on such action, which was added to the file as documentary evidence, would be prepared by the approved notary public.

19. In Spain, illicit drug trafficking was covered by the Penal Code, which had been amended in 1988. Law No. 4/1984 of 9 March 1984, amending article 338 of the Law on Criminal Procedure, provided for the possiblity of the destruction of seized drugs, prior to a trial for illicit drug trafficking, following the retention of the samples required for evidentiary purposes. Destruction was effected by incineration. The samples were analysed by officially recognized laboratories in order to determine the composition, properties, nature, quality, quantity, weight and measure of the items destroyed. Depending on the degree of danger involved in their storage or safekeeping, the prosecuting judge could authorize the pre-trial destruction of the drugs seized in a hearing involving the Office of the Public Prosecutor, and the owner, if known, or the person in whose possession the substances to be destroyed were found. The accused or his or her representative or an expert of his or her choice was given the opportunity to participate in the taking and analysis of samples.

20. Mexico had seized large quantities of narcotic drugs, particularly cocaine, and psychotropic substances mostly destined for the United States. New legislative measures had been adopted in Decemnber 1988 to counter the threat of drug trafficking. Operationally, law enforcement agencies had been restructured, and provided with the economic resources and equipment to combat the drug trafficking menace. The penal code, as recently amended, permitted, in addition to the confiscation of all the assets of the drug traffickers, the pre-trial destruction of seized drugs. Cannabis was incinerated on the site of seizure. Cocaine was incinerated at three-monthly intervals at a specific site so as to avoid any adverse effect on the environment. Whenever possible, seized drugs were destroyed in the presence of notaries, law enforcement personnel and other national and international representatives. Mobile seizure laboratories and disposal units were used to enable seized drugs to be analysed and destroyed in situ. Before being destroyed, several samples were taken for evidentiary purposes, and a procès-verbal established. Reference was made to the use of the military in search and seizure operations and in the eradication of illicit crops.

21. The Meeting agreed on a framework to be followed in order to examine systematically the procedures involved from the time of seizure to the ultimate disposal of the seized narcotic drugs, psychotropic substances, and substances used for their illicit manufacture. Such procedures included the inventory to be drawn up at the time of seizure, the urgent disposal, transportation, storage, sampling, expert analysis of those substances and decision and action regarding their disposal.

22. There was general agreement that the gross and net weight, date, description, mode of packing, marks and numbers of seized narcotic drugs, psychotropic substances and substances used for their illicit manufacture, and any other factor that might assist in their identification should be included in the inventory to be drawn up at the time of seizure. It was suggested that the name and seals of the officer making the seizure and the signature of the alleged offender and witnesses, where appropriate, should be affixed on the seized drugs and samples. It was also suggested that the police report

indicate the circumstances of the seizure and be attached to the inventory. Some experts stressed the importance of having photographs and video films taken in order to have a visual record of the site and circumstance of the seizure, which would help to recreate the circumstances of the seizure should the alleged offender's counsel or Office of the Public Prosecutor so request. Some experts, while noting the importance of visual records, expressed the view that they constituted only secondary elements of proof. Two experts stressed the importance of obtaining a detailed report on the packaging and marks of the illicit consignments, as such information was needed to identify their origin. It was mentioned that information on packaging had contributed to the identification and dismantling of a drug cartel.

23. The importance of recording the quantity of the seized narcotic drugs, psychotropic substances and substances used for illicit manufacture was stressed by several experts. It was observed that presenting substantial quantities of seized drugs before a court had an impressive visual impact, particularly when dealing with a jury, and could help to establish the gravity of the offence. A certificate testifying to the figures involved might not have the same effect. The view was expressed that judges and juries were perfectly aware of the gravity of drug trafficking offences and that a case would stand or be rejected on the basis of the evidence and the level of proof. The presence of large quantities of seized drugs would therefore have little bearing on the outcome of the case, as the volume of seized drugs would be described in the documents before the court. Several experts emphasized the importance of guaranteeing the rights of the alleged offender and providing him or her with the opportunity of having the seized illicit consignment re-weighed. That was considered particularly important, since in most penal systems the severity of the penalty, including capital punishment, depended on the quantity seized.

24. Several experts said that the practice in their countries was to destroy large quantities of narcotic drugs and psychotropic substances as soon as possible in order to avoid pilferage and mishandling. It was noted that large crops and large consignments (particularly of cannabis and cocaine, which were often seized by the ton) had to be destroyed on the spot as their transportation and storage posed a problem. Prior to destruction, however, the necessary samples were retained for analysis. One expert indicated that the seizure and destruction of precursors and essential chemicals were not always legally possible in his country as their possession was not an offence. Only their use for the illicit manufacture of narcotic drugs and psychotropic substances constituted a criminal activity. Several experts stressed the importance of establishing a time-frame for the urgent disposal of seized narcotic drugs and psychotropic substances, particularly since the rate of decomposition and auto-degradation of some narcotic drugs and psychotropic substances seized in the illicit market was particularly rapid because they contained volatile substances.

25. The Meeting's attention was drawn to the problems arising from the rapid increase in the volume and great diversity of narcotic drugs, psychotropic substances, and substances used for their illicit manufacture seized in the illicit traffic. Their urgent disposal was necessary as storage was impractical and could sometimes be hazardous. It was observed that following the inclusion of precursors and essential chemicals in Tables I and II of the Convention, different methods of destruction, such as hydrolysis, chemical decomposition and biodegradation, would have to be explored, for their disposal by incineration would not be a practical solution in every case. It was noted that little information was available regarding the toxicity of several substances used for the illicit manufacture of narcotic drugs and psychotropic substances.

26. Several experts referred to the danger, in view of their toxic, flammable, explosive or hazardous nature, that several seized narcotic drugs, psychotropic substances and substances used for their illicit manufacture presented for the environment and for the law enforcement personnel responsible for their destruction or safekeeping. The view was expressed that in such cases law enforcement authorities should proceed urgently with their disposal, giving primary consideration to security and health considerations. Mention was made of the difficulties encountered in incinerating potentially toxic substances. The Mexican authorities, for example, had problems in destroying a large consignment of seized MDMA (Ectasy); incineration was excluded in view of the toxic nature of the gas released during combustion. Mention was also made of a second expert group Meeting, which would be convened in 1990 to consider and propose ecologically safe and cost-effective methods for the destruction or other disposal of seized narcotic drugs, psychotropic substances and substances used for their illicit manufacture. The Meeting agreed that the more dangerous substances should be disposed of as soon as possible and that less dangerous substances should be destroyed after representative samples had been retained.

27. Several experts stressed the importance of providing security measures to ensure the safe transport of seized drugs from the place of seizure to the place of storage and from the place of storage to the place of disposal in order to prevent mishandling and theft. Pointing to the provisions of the legislation in his country, which required the destruction of seized drugs within 24 hours, one expert indicated that the measure was a drastic one and had been adopted in order to avoid transporting the seized illicit consignments. It was observed that the transport of large quantities of seized drugs for warehousing was not feasible because of the large volume seized and the security problem involved. With reference to the United States, one expert observed that for evidentiary purposes it was critically important to have a report on the custody, including the transport, of the seized drugs from the time of seizure to their presentation in court as evidence. Some experts suggested that the judicial authority should be made responsible for the transport and all subsequent movement of the drugs following their seizure. Two experts indicated that, given the size of their countries and the limited quantity of the drugs seized, transport was a source of concern, although it might not involve serious problems.

28. While drawing attention to the importance of taking and retaining samples as an alternative to the storage of large quantities of the seized drugs, several experts mentioned some of the practical and legal difficulties with regard to establishing representative samples acceptable to a judge or jury as primary evidence. Some experts observed that it was not clear what constituted a representative sample or what amount should be destroyed and what quantity retained for evidentiary purposes. The retention of representative samples was particularly important since the scientific analysis made at the time of seizure could be challenged by the accused, who might request that new tests be undertaken. Several experts indicated that the evidentiary procedures of their legal system required that a substantial quantity of all seized drugs be retained so as to afford the alleged offender the possibility of having access to future independent analysis. Several experts emphasized the importance of having the alleged offender present at the time when samples were taken or of giving him or her the opportunity to be present. Some experts indicated that the practice in their countries was to have the seals of the officer making the seizure, the signature of two witnesses and the alleged offender's signature on the samples taken for analysis.

29. Following a review of the varying sample sizes and divergent procedures for sample collection under the respective legal systems, there was general

agreement that the sampling procedures for the analysis of seized illicit narcotic drugs, psychotropic substances and substances used for their illicit manufacture should follow internationally acceptable procedures such as those contained in manuals for use by national narcotic laboratories prepared and published by the Division of Narcotic Drugs of the United Nations Secretariat. The Meeting was provided with manuals for the recommended methods for testing cannabis, cocaine and opium/crude morphine prepared by the Division.

30. Several experts gave detailed descriptions of the procedures and functioning of the storage of seized drugs in their countries. Several considered that the role of the administrative body responsible for storage and custody should be clearly identified if it was not already specified in national legislation. Some experts said that major seizures were destroyed on the spot whenever possible; storage was not a practical solution as such seizures sometimes involved large amounts, as was often the case with cannabis and cocaine.

31. The Meeting stressed the importance of establishing an acceptable time frame with regard to the storage of seized drugs. It was pointed out that the rate of decomposition of most seized drugs was very rapid, particularly when the drugs were cut by substances that accelerated the decomposition process. It was accordingly not considered practical to store such drugs beyond their shelf-life. Furthermore, the retention of seized drugs could be of advantage to the alleged offender, who might request that new samples be taken for analysis when the case was brought to court. Since a long time could have elapsed since the actual seizure, chemical decomposition could have substantially altered the drug. It was therefore suggested that adequate samples should be taken immediately after seizure in order to establish the nature of the seized drugs, and the balance should be destroyed. Appropriate measures should be taken to preserve and safeguard the samples.

32. Several experts commented on the procedure for the expert analysis of the samples of the seized drugs in their countries. It was observed that, following their preliminary identification at the time of seizure by law enforcement agencies using test kits, the samples of the seized drugs were forwarded to accredited laboratories for analysis and identification.

33. Several experts emphasized the importance of protecting the rights of the accused. Some suggested that the alleged offender or his or her expert representative should be provided with the opportunity of participating in the selection of the samples and their analysis. With reference to the practice in their countries, some experts indicated that whenever the methodology or the result of the analysis from an accredited laboratory was contested, the judge might order another analysis to be done by an independent expert in order to test the accuracy of the analysis. One expert said that no provision was made under the procedure in his country for an analysis to be undertaken by a private chemist if the analysis of the accredited laboratory was contested by the accused. Another expert noted that the presence of the accused or his or her representative when the sample was selected and analysed was incompatible with the practice in his country. He observed that following the preliminary test by law enforcement agencies to ascertain the illicit nature of the seized drugs, the samples of the seizure were forwarded to certified laboratories, and the scientific analysis provided could not be contested by the alleged offender.

34. The experts discussed the possibility of establishing a procedure by which the systematic pre-trial destruction of narcotic drugs, psychotropic substances and substances used for their illicit manufacture could be effected in order to avoid the problems associated with the storage of large amounts of such

products over a long period. That was particularly relevant for countries that had no provisions in their national legislation to that effect. One expert pointed to the necessity of establishing the amount to be destroyed or, a contrario, the amount to be retained in the case of large seizures. There was general agreement that, considering the cost of storage, transport and the security considerations involved, as well as the chemical decomposition of the seized drugs during storage, large quantities of seized drugs should be destroyed as soon as possible.

35. The authority or person who could authorize the destruction or other disposal of the drugs and the reasons to be given for requesting such action were questions discussed by several experts. The view was expressed that any authority or agency specified in the national legislation could authorize the disposal of seized drugs. No seizure should be destroyed before representative samples had been taken. It was also stressed by some experts that the principle of impartiality and the due process rights of the alleged offender should be guaranteed and, to that effect, both the prosecution and the alleged offender or his or her representative should be heard prior to the pre-trial destruction.

36. Some experts observed that only the drugs that could not be reprocessed and reused for legitimate purposes should be destroyed. With reference to India, one expert indicated that opium, morphine, codeine and thebaine were reprocessed, whereas heroin, cannabis resin (hashish), cocaine, methaqualone (mandrax tablets) and other seized substances were incinerated. One expert referred to his country's reuse of seized opium for the manufacture of cough mixtures. Another expert said that the practice in his country was to destroy all seized drugs, including opiates, as their reprocessing was not a cost-effective venture, given the fact that most seized drugs were cut with several other substances. Two experts referred to the practice in their countries of incinerating the seized drugs publicly with a view to bolstering the public's confidence in the drug law enforcement authorities and demonstrating that seized drugs were in effect destroyed.

37. With reference to the situation in his country, one expert proposed that the Meeting recommend that the presence of independent witnesses should be secured, whenever possible, at the time of the seizure of narcotic drugs and psychotropic substances and substances used for their illicit manufacture, which would, inter alia, prevent the accused from retracting the testimony given by him or her at the time of arrest. The Meeting decided not to support the proposal, as the security and safety of witnesses could not be guaranteed in view of the fact that most seizures were effected in dangerous situations, where even the security and safety of law enforcement personnel was at stake. The effect of the proposal, if adopted, would be to reduce the effectiveness of police operations and to endanger the safety of witnesses. It was also pointed out that seizures were sometimes made by mobile paramilitary groups and that the seized drugs were destroyed on site. The view was expressed that civilian witnesses were not required, as the law enforcement authorities making the seizure would serve as witnesses. It was, however, suggested that the observation of witnesses should, where possible, be recorded.

38. Following its detailed review of the legal issues associated with the seizure, storage, pre-trial destruction of confiscated drugs, the rights of the alleged offender and the responsibility for the Governments to investigate and prosecute illicit drug trafficking, the Meeting requested that the proposed second expert group Meeting take due note of its recommendations before drawing up associated recommendations covering the scientific and

technical aspects of drug sampling, chemical analysis and destruction. The Meeting, noting the interrelationship between legal and technical aspects of pre-trial destruction, recognized that the recommendations it had adopted might need to be supplemented if further legal issues should arise out of the work of the proposed second expert group Meeting.

Note

1/ See Official Records of the Economic and Social Council, 1989, Supplement No. 5 (E/1980/23), chap. V, para. 107.

Annex

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